

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte OSCAR HSIEN-HSIANG HSU and  
GABRIEL L. De TOMMASO

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Appeal No. 1997-1219  
Application 08/432,649

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ON BRIEF

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Before WILLIAM F. SMITH, KIMLIN, and GARRIS, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1, 2 and 7 which are all of the claims pending in the application.

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The subject matter on appeal relates to an improved process for manufacturing wood composition boards under heat and pressure which includes use of a composition comprising a crosslinking resin and an aqueous dispersion of acrylic polymer particles having a THF gel content of greater than about 70% and wherein the particles are formed from a monomer mixture comprising from about 0.2% to about 5% by weight allyl methacrylate. This appealed subject matter is adequately illustrated by independent claim 1, which reads as follows:

1. An improved process for manufacturing wood composition boards under heat and pressure comprising providing a fibrous mat, treating the surface of said mat, hot pressing said mat at elevated temperature and pressure into a solid composition board product, and releasing said composition board from said press wherein the improvement comprises treating the surface of the mat with a composition comprising a crosslinking resin and an aqueous dispersion of acrylic polymer particles, wherein said particles have a THF gel content of greater than about 70% and wherein said particles are formed from a monomer mixture comprising from about 0.2% to about 5%, by weight allyl methacrylate based on the weight of said particles; and whereby the press release rating of said manufactured wood composition board is superior to that of a comparative board comprising particles having a THF gel content of less than about 70%.

The references relied upon by the examiner as evidence of obviousness are:

Sanfilippo et al. (Sanfilippo)	4,336,174	Jun. 22,
1982		

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Kanda et al. (Kanda) 4,920,175 Apr. 24,  
1990  
(filed May 19, 1980)

Claim 7 stands rejected under the first paragraph of 35 U.S.C. § 112 as being based upon a disclosure which fails to contain an adequate written description of the here claimed invention.

Claims 1, 2 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sanfilippo in view of Kanda.

We refer to the Brief and Reply Brief and to the Answer respectively for a complete exposition of the opposing viewpoints expressed by the appellants and the examiner concerning the above noted rejections.

#### OPINION

For the reasons which follow, we will sustain the § 112 rejection but not the § 103 rejection advanced by the examiner on this appeal.

Concerning the § 103 rejection, we agree with the appellants that the applied prior art contains no teaching or suggestion of acrylic polymer particles "formed from a monomer mixture comprising from about 0.2% to about 5%, by weight

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allyl methacrylate" as required by all of the appealed claims. While it is true that certain of Kanda's monomers correspond to certain of the monomers disclosed in the appellants' specification, the fact remains that neither Kanda nor Sanfilippo contains any teaching or suggestion of the specific type or amount of monomer defined by the appealed claims, namely, from about 0.2% to about 5% by weight allyl methacrylate (which is disclosed on page 8 of the appellants' specification as being their preferred type and amount of monomer). It follows that we cannot sustain the examiner's § 103 rejection of claims 1, 2 and 7 as being unpatentable over Sanfilippo in view of Kanda.

As for the § 112 rejection, it is the examiner's basic position that the "90/10" ratio recited in appealed claim 7 fails to comply with the written description requirement set forth in the first paragraph of this statute. According to the appellants, this ratio is supported by the written description in Example 6 of the subject specification which discloses "[t]o 100 g. of aqueous dispersion solids was added 10 g. of aminoplast resin" (specification, page 16). More specifically, the appellants interpret the disclosure "100 g.

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of aqueous dispersion solids" as referring to acrylic polymer particles, per se, whereas the examiner interprets this disclosure as referring to the acrylic polymer particles in combination with the water in which they are contained.

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. ***In re Kaslow***, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

In applying this test to the case at bar, we are led to the determination that the "90/10" ratio of appealed claim 7 does not comply with the written description requirement set forth in the first paragraph of § 112. In the first place, the examiner's interpretation of the above quoted disclosure, which leads to a conclusion that his § 112 rejection is proper, is a reasonable interpretation on the record before us. Certainly, the appellants have proffered no evidence that the specification disclosure in controversy would have

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conveyed to an artisan with ordinary skill their interpretation rather than the examiner's interpretation. In any event, and perhaps more importantly, this specification disclosure even when interpreted in the manner urged by the appellants, fails to provide written description support for the here claimed ratio. This is because the ingredient amounts disclosed in specification Example 6 yield a ratio of approximately 91/9 rather than the "90/10" ratio which is precisely recited in appealed claim 7. In this latter regard, we emphasize that claim 7 contains no language which broadens the scope of the "90/10" ratio recited therein so as to include the approximately 91/9 ratio derived from specification Example 6.

Under the circumstances recounted above, we will sustain the examiner's § 112, first paragraph, rejection of claim 7.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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	)	
William F. Smith	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
Edward C. Kimlin	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
Bradley R. Garris	)	
Administrative Patent Judge	)	

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